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Honorable Brian D. Lynch

4 IN THE UNITED STATES BANKRUPTCY COURT
5 FOR THE WESTERN DISTRICT OF WASHINGTON

6 **DERRICOTT, Justin and Heather,**
Debtors.

Number 15-45459

Adversary Number: 19-

8 **DERRICOTT, Justin and Heather,**
9 Plaintiffs,

COMPLAINT

10 vs

11 **WELLS FARGO BANK N.A.**
Defendant.

12 Justin Derricott and Heather Derricott, the Debtors (hereinafter "Plaintiffs") allege as
13 follows:

14 **I. Jurisdiction**

15 1. That this Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334
16 & 28 U.S.C. 157(b)(2)(G). This matter relates to a case under Title 11 of the United States
17 Code. This proceeding is defined as a "core proceeding" as that is defined in the Code.
18 Plaintiffs consent to entry of final orders or judgment by the bankruptcy court in this
19 adversary proceeding.

20 **II. History**

21 2. That Plaintiffs filed their Chapter 13 bankruptcy case in the United States
22 Bankruptcy Court for the Western District of Washington on November 25, 2015 under case
23 number 15-45459.

24 3. That an Order for Relief under the provisions of the Bankruptcy Code was duly
25 entered by this Court upon the filing of the Petition.

26 COMPLAINT - 1

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1 4. That Michael G. Malaier was appointed the Chapter 13 Trustee in the Derricott
2 Chapter 13 case and serves in that capacity in this case (hereinafter "Trustee").

3 **III. Factual Allegations**

4 5. That Plaintiffs' counsel and Trustee received a letter from Defendant acting through
5 its division, Wells Fargo Auto, dated March 22, 2019, a copy of which is attached to this
6 Complaint and incorporated by reference.

7 6. That Defendant indicated in the above referenced letter that it was holding the sum of
8 \$5,126.43 due Plaintiffs because Defendant unnecessarily applied Collateral Protection
9 Insurance to Plaintiffs' account with Defendant.

10 7. Plaintiffs have amended their Chapter 13 filing by amending Schedules A/B to
11 disclose the above referenced funds. Plaintiffs have also Amended Schedule C to claim said
12 funds as exempt.

13 8. That Defendant has failed to pay over to the Chapter 13 trustee the above-referenced
14 funds and no just reason for its failure exists.

15 **IV. Prayer for Relief**

16 WHEREFORE, Plaintiffs respectfully prays for the following relief:

17 1. That the Court enter an Order directing Defendant to deliver to the Chapter 13
18 trustee the above-referenced funds within 10 days of entry of an Order Directing Defendant
19 to Return Funds.

20 2. For entry of an Order imposing a penalty of One Hundred Dollars (\$100.00) a day
21 for each day beyond 10 days that Defendant fails to remit the funds to the Chapter 13 trustee.

22 3. That Plaintiffs have such further and other relief as the Court deems just and
23 proper.
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Dated this 7th day of June 2019

Law Offices of Travis Gagnier, Inc., P.S.
Attorneys for Plaintiffs

/s/ Travis A. Gagnier
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Gregory Jalbert, WSBA #9480
Of Counsel